

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**Avery Torres,  
Plaintiff**

**v.**

**C.O. Pagan,  
C.O. Cuevas,  
Defendants**

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**03 Civ. 8989(SCR)(LMS)**

**DECISION AND ORDER**

On November 14, 2003, Avery Torres (the “Plaintiff”) filed his complaint in this action, and was granted *in forma pauperis* status. The complaint, which has not been served, alleges that the defendant corrections officers violated the Plaintiff’s Eighth Amendment rights by assaulting him and denying him medical attention. The only contact information provided by Plaintiff was an address at Rikers Island.

On June 22, 2004, I referred the case to Magistrate Judge Smith for a report and recommendation. On November 24, 2004, Magistrate Judge Smith issued a Report and Recommendation, informing me of various facts. In particular, Judge Smith indicated that Plaintiff had made no filings in his case since it was referred to her, and that a copy of the order of reference, which was sent to Plaintiff, was “Returned to Sender, Unclaimed.” On October 18, 2004, Judge Smith sent a letter to Plaintiff informing him that the failure to serve his complaint within 120 days of filing could result in the dismissal of his action pursuant to Fed. R. Civ. P. 4(m). This letter was also returned to sender, with a note indicating that “inmate not in system by name BIC#s.” In light of these facts, Judge Smith recommended that I dismiss this case without prejudice pursuant to Fed. R. Civ. P. 4(m) and Local Rule 1.3(d), for failure to notify the clerk of the court of any change in address.

In reviewing a Report and Recommendation, a Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted). *See also Pizarro v. Bartlett*, 776 F. Supp. 815, 817 (S.D.N.Y. 1991) (court may accept report if it is “not facially erroneous”). However, a district court judge is required to make a de novo determination as to the aspects of the report and recommendation to which objections are made. *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). Here, neither party submitted any objections to Magistrate Judge Smith’s Report and Recommendation.

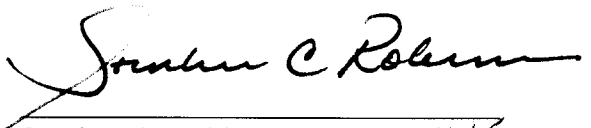
Having reviewed Judge Smith’s thorough and well-reasoned Report, I accept and adopt the Report in its entirety.

Accordingly, this case is hereby DISMISSED without prejudice.

The Clerk of the Court is directed to CLOSE the case.

It is so ordered.

White Plains, New York  
Dated: September 8, 2005

  
Stephen C. Robinson 9/8/05  
United States District Judge